

1 MAYER BROWN LLP
2 CARMINE R. ZARLENGA (*pro hac vice*)
3 *czarlenga@mayerbrown.com*
4 1999 K Street, N.W.
5 Washington, DC 20006-1101
6 Telephone: (202) 263-3000
7 Facsimile: (202) 263-3300

8 DALE GIALI (SBN 150382)
9 *dgiali@mayerbrown.com*
10 KERI E. BORDERS (SBN 194015)
11 *kborders@mayerbrown.com*
12 350 South Grand Avenue, 25th Floor
13 Los Angeles, CA 90071-1503
14 Telephone: (213) 229-9500
15 Facsimile: (213) 625-0248

16 *Attorneys for Plaintiff 3M Company*

17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

3M COMPANY,

Plaintiff,

vs.

RX2LIVE, LLC and RX2LIVE, INC.,

Defendants.

Case No. 1:20-cv-00523-NONE-SAB

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR A TEMPORARY
RESTRAINING ORDER AND
PRELIMINARY INJUNCTION
AGAINST RX2LIVE, LLC AND
RX2LIVE, INC.**

*[Filed concurrently with Plaintiff's
Memorandum of Points and Authorities;
Declaration of Dale Giali; Declaration of
Carmine R. Zarlenga; Declaration of
Charles Stobbie; Declaration of David A.
Crist; and [Proposed] Order]*

Action Filed: April 10, 2020
Amended Complaint Filed: April 19, 2020
Jury Trial Demanded

1 **PLEASE TAKE NOTICE** that, Plaintiff 3M Company, by and through its undersigned
2 counsel, will move The Honorable Dale A. Drozd, in the United States District Court for the
3 Eastern District of California, 2500 Tulare Street, Fresno, California 93721 on a date and at a
4 time that the Court so orders, based on the accompanying Memorandum of Points and
5 Authorities, the Declarations of Dale Giali, Carmine R. Zarlenga, Charles Stobbie, and David A.
6 Crist, and the record in this lawsuit, for an Order granting a Temporary Restraining Order against
7 Defendants RX2Live, LLC and RX2Live, Inc. and an Order to Show Cause as to why the Court
8 should not enter an Order for a Preliminary Injunction, pursuant to Fed. R. Civ. P. 65(a), which:
9 (i) preliminarily enjoins Defendants, their agents, servants, employees, officers and all persons
10 and entities in active concert and participation with them from using the “3M” trademarks (the
11 “3M Marks”) and any other word, name, symbol, device, or combination thereof that is
12 confusingly similar to the 3M Marks, for, on, and/or in connection with the manufacture,
13 distribution, advertising, promoting, offering for sale, and/or sale of any goods or services,
14 including, without limitation, Plaintiff’s 3M-brand N95 respirators, during the pendency of this
15 action; and (ii) preliminarily enjoins Defendants, their agents, servants, employees, officers and
16 all persons and entities in active concert and participation with them from engaging in any false,
17 misleading, and/or deceptive conduct in connection with 3M and its products, including, without
18 limitation, representing themselves as being authorized distributors, vendors, agents,
19 representatives, retailers, and/or licensees of 3M and/or any of 3M’s products (including, without
20 limitation, 3M-brand N95 respirators); falsely representing to have an association or affiliation
21 with, sponsorship by, and/or connection with, 3M and/or any of 3M’s products; falsely
22 representing that 3M has increased the price(s) of its 3M-brand N95 respirators; and offering to
23 sell any of 3M’s products at a price and/or in a manner that would constitute a violation
24 California Penal Code § 396 and/or California Business and Professions Code §§ 17200 *et seq.*,
25 during the pendency of this action.

1 Dated: April 27, 2020 Respectfully submitted,

2 /s/ Carmine R. Zarlenga

3 Carmine R. Zarlenga

4 MAYER BROWN LLP

5 CARMINE R. ZARLENGA (*pro hac vice*)

6 *czarlenga@mayerbrown.com*

7 1999 K Street, N.W.

8 Washington, DC 20006-1101

9 Telephone: (202) 263-3000

10 Facsimile: (202) 263-3300

11 DALE GIALI (SBN 150382)

12 *dgiali@mayerbrown.com*

13 KERI E. BORDERS (SBN 194015)

14 *kborders@mayerbrown.com*

15 350 South Grand Avenue, 25th Floor

16 Los Angeles, CA 90071-1503

17 Telephone: (213) 229-9500

18 Facsimile: (213) 625-0248

19 *Attorneys for Plaintiff 3M Company*